

SECOND AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT

THIS SECOND AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT ("Second Amended PILOT"), made as of February 1, 2024, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 548 Broadway, Monticello, New York 12701 ("Agency") and EMPIRE RESORTS REAL ESTATE I, LLC a New York limited liability company, having its principal offices at c/o Resorts World Catskills, 888 Resorts World Drive, Monticello, New York 12701 ("Company"), amends that certain Payment in Lieu of Taxation Agreement, made as of December 22, 2016 ("2016 PILOT Agreement"), which was previously amended by that certain First Amended Payment in Lieu of Taxation Agreement, dated as of March 31, 2022 ("First Amended PILOT" and together with the 2016 PILOT Agreement, the "PILOT Agreement").

Unless otherwise defined herein, all capitalized terms shall have the meaning given them in the PILOT Agreement.

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, the Agency was created pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively, referred to as the "Act") and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, the Company presented an application ("Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project consisting of the: (i) acquisition, construction, installation and equipping of a new eighteen (18) hole golf course ("Golf Course"), an approximately 14,000± square foot clubhouse, an approximately 12,800± square foot maintenance building and related structures ("Buildings")

situate on one (1) parcel of real estate consisting of approximately 216.75± acres located along Thompsonville Road and Chalet Road, Town of Thompson ("Town"), County of Sullivan ("County"), State and currently identified on the Town tax map as 15.-1-15 ("Land"); (ii) acquisition, construction and equipping of the Golf Course and Buildings; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iv) construction of improvements to the Golf Course, the Buildings, the Land and the Equipment (collectively, the Golf Course, the Buildings, the Land and the Equipment are referred to as the "Project"); and (v) lease of the Project from the Agency to the Company; and

WHEREAS, by resolution adopted on June 20, 2016 (the "2016 Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to, among other conditions, the Company entering into the First Amended PILOT; and

WHEREAS, the Agency and the ERREI entered into the following documents:

1. Agent and Project Agreement, dated December 22, 2016;
2. Environmental Compliance and Indemnification Agreement, dated December 22, 2016;
3. Bill of Sale to Agency, dated December 22, 2016;
4. Bill of Sale to Company, dated December 22, 2016;
5. Lease to Agency and memorandum thereto, dated December 22, 2016 ("Lease Agreement");
6. Leaseback to Company and memorandum thereto, dated December 22, 2016 ("Leaseback Agreement"); and
7. Payment in Lieu of Tax Agreement, dated December 22, 2016 ("2016 PILOT Agreement");

(Items 1-7 collectively referred to as the "2016 Transaction Documents"); and

WHEREAS, by letter application dated March 9, 2022 ("2022 Letter Application"), ERREI requested the 2016 Transaction Documents be amended; and

WHEREAS, by Resolution dated March 30, 2022 ("2022 Resolution" and together with the 2016 Resolution, the "Resolutions"), the Agency authorized amendment of the 2016 Transaction Documents as follows:

- A. To modify the description of the Project to update the reference of "an approximately 14,000± square foot clubhouse" to "a comfort station including restrooms and light snacks";
- B. Increase the total budget from \$17,600,000 to \$33,700,000;
- C. Increase the total authorized exempt purchases by an additional \$12,125,000;
- D. Increase the authorized sales tax exemption by an additional \$970,000;
- E. Extend the date for completion to June 1, 2023; and

F. Amend the PILOT Agreement so the sixteen- (16) year period of benefits starts the year following completion of the Project.

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, install and equip the Project in accordance with the plans and specifications presented to the Agency as modified by the 2022 Letter Application and approved by the Resolutions; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, on or about March 31, 2022, the Agency and the Company executed an Omnibus Amendment to Project Documents and a First Amended PILOT making provision for payments in lieu of taxes by the Company for the benefit of the County, Town and the Monticello Central School District ("School") (collectively, the County, the Town and the School are referred to as the "Taxing Jurisdictions"), which incorporated the changes to the Project as outlined in the 2022 Letter Application; and

WHEREAS, on or about December 11, 2023, the Agency and Montreign Operating Company, LLC ("MOC") entered into a Second Amendment to Amended and Restated Payment in Lieu of Taxation Agreement ("2023 MOC PILOT Amendment"); and

WHEREAS, on or about December 31, 2023, the Agency and Empire Resorts Real Estate II, LLC ("ERREII") entered into a Second Amended Payment in Lieu of Taxation Agreement ("2023 ERREII PILOT Amendment"); and

WHEREAS, the 2023 MOC PILOT Amendment and 2023 ERREII PILOT Amendment include a clarification of employment goals for the projects governed by this Second Amended PILOT and the 2023 MOC PILOT Amendment and 2023 ERREII PILOT Amendment, which the Agency and Company wish to incorporate into this PILOT Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

1. Article III, Section 3(a), Employment goals of the PILOT Agreement is hereby deleted in its entirety and a revised Article III, Section 3(a) is inserted in its place and stead, to read as follows:

“(a) Employment Goals.

This PILOT Agreement is one of three (3) PILOT agreements for projects comprising the Resorts World Complex. The related PILOT agreements are the PILOT agreement by and between the Agency and ERREII which relates to the EV Hotel Project (“EV Hotel Project PILOT”) and the PILOT agreement by and between the Agency and MOC which relates to the Casino Resort (“Casino PILOT”). The Casino Resort, EV Hotel Project and the Golf Project are referred to herein as the “Resorts World Complex”. This PILOT Agreement together with the EV Hotel Project PILOT and Casino PILOT are referred to herein as the “Resorts World Complex PILOTs”.

- (i) **Employment Goal Definitions:** For the purposes of this Agreement, the following terms shall have the meaning set forth in each definition:
 - (1) “Employee” shall mean a person first employed by the Company, an affiliate of the Company, a tenant of the Company, a consultant or any third-party vendor at the Resorts World Complex.
 - (2) “Full-Time Equivalent Employee” or “FT” shall mean an employee who works thirty-five (35) hours in any seven (7) day period at the Resorts World Complex.
 - (3) “Base Compensation” shall be determined in accordance with the provisions of the Fair Labor Standards Act.
- (ii) **FT Employment Goals:**
 - (1) An FT employment goal of 1,050 jobs at the Resorts World Complex shall be maintained for the calendar year 2019.
 - (2) The Company shall not be subject to an FT employment goal for the calendar year 2020 or the calendar year 2021.
 - (3) An FT employment goal of 1,050 jobs at the Resorts World Complex shall be maintained for the calendar year 2022 and thereafter.”

The Company shall cause MOC to file with the Agency on January 1st of each year until the latest of the Resorts World Complex PILOTs have terminated, a statement certified under oath setting forth the actual FTs employed at the Resorts World Complex for the preceding calendar year. Such statement shall contain such additional information as the Agency may reasonably request. The Company shall cause MOC to make available to the Agency such information as it may request to verify the information provided to the Agency including, but not limited to State and Federal employment tax forms and payroll records of the Company. “Actual average FT - employment” shall be determined by adding the actual FTs employed in each month of the applicable calendar year and dividing such sum by twelve (12).

(iii) Computation of PILOT Payment if FT Employment Goals Not Attained: In the event the FT employment goal is not attained with respect to any calendar year during which Employment Goals are applicable, the next ensuing PILOT Payment shall be subject to adjustment. For avoidance of doubt, Employment Goals are not applicable to the calendar year 2020 or calendar year 2021. The amount due ("Adjusted PILOT Payment") shall be the amount calculated in ¶1.3 (as applicable), plus an amount equal to the tax calculated as if an exemption under RPTL §485b were in effect, less the amount calculated in ¶1.3 (as applicable), times the percentage:

- (1) the numerator of which is equal to 1050 minus the actual average FT employment for the prior calendar year, and
- (2) the denominator of which is 1050.

By way of example, if in calendar year 2025 (i) the actual average FT employment is 945; (ii) the Town equalization rate used by the County to allocate 2025 taxes is fifty (50%) percent; (iii) the Town combined school, county and town rate relating to the 9/1/2025 school tax and 1/1/2026 county and town tax bills is \$50.00 per \$1,000.00 of assessed value (iv) the assessed value of the Facility on the 2025 Final Assessment Roll is \$5,000,000 full value; (v) \$4,000,000 of improvement value would have been eligible for the §485b exemption at a rate of twenty-five (25%) percent, then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

PILOT Payment

PILOT Payment = Total Value Subject to PILOT x Equalization Rate x tax rates
$$\$120,000 = \$4,800,000 \times 50\% \times 50/1000$$

Tax under §485b

Tax under §485b = Assessed Value - §485b exemption x tax rates

$$\$200,000 = (\$5,000,000 - \$1,000,000) \times 50/1000$$

Adjusted PILOT Payment

Adjusted PILOT Payment = PILOT Payment + [(tax under §485b - PILOT Payment amount) x Percentage of Underemployment]

$$\$128,000 = \$120,000 + [(\$200,000 - \$120,000) \times 105/1050]$$

In no event shall the Adjusted PILOT Payment exceed the amount payable if the Facility were subject to taxation and a §485b exemption had been granted to eligible portions of the Facility.”

2. Article XII Indemnification, at Section 12 of the 2016 PILOT Agreement, is hereby amended to add to the beginning of the first sentence “To the fullest extent permitted by law,”

3. The Notice address set forth in Section 14(a) of the 2016 PILOT Agreement, as previously amended by the First Amended PILOT, for a copy of the Notice addressed to the Agency, is hereby amended as follows:

“with a copy to:

Walter F. Garigliano P.C.
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701
Attn: Agency Counsel”

4. Expenses. All fees and costs related to this Second Amended PILOT shall be paid by the Company.

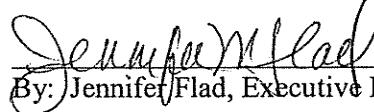
5. Integration. Except as herein amended, all other terms and conditions of the PILOT Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this Second Amended PILOT or the PILOT Agreement, the terms of this Second Amended PILOT shall control.

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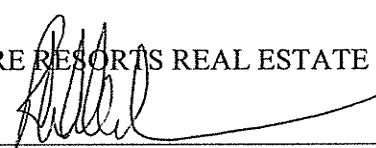
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IN WITNESS WHEREOF, the parties hereto have executed this Second Amended PILOT as of the day and year first above written.

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY


By: Jennifer Flad, Executive Director

EMPIRE RESORTS REAL ESTATE I, LLC


By: Robert DeSalvio, President